

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30620
Conference Calendar

JOHN POUILLARD,

Plaintiff-Appellant,

versus

EDWIN EDWARDS, Governor,
ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. CA-94-2504-A
- - - - -

(March 22, 1995)

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

IT IS ORDERED that John Poullard's motion for leave to proceed in forma pauperis is DENIED, because his appeal lacks arguable merit and is therefore frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). In ruling on the motion, this Court has examined it and Poullard's brief in the light most favorable to him and has reviewed the record for any basis to support granting him relief on appeal. Because we have concluded on this review that the appeal is frivolous, IT IS FURTHER ORDERED that the appeal is DISMISSED. See 5th Cir. R. 42.2.

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Poullard is serving a state sentence in the Louisiana State Penitentiary. In his civil rights complaint, he requested a declaratory judgment that 1980 La. Acts No. 429 be declared unconstitutional. This statute provides for "applications for post conviction relief" rather than habeas corpus as the remedy for persons in custody who challenge convictions or sentences imposed in Louisiana state courts. See La. Code Crim. Proc. Ann. art. 351 (West 1991) and arts. 924-930.8 (West 1984 & Supp. 1994). Poullard also requested injunctive relief: (1) that the statute be "demolish"; and (2) that he be allowed to petition for habeas relief in a state court. The district court dismissed the action as frivolous on authority of 28 U.S.C. § 1915(d).

To obtain leave to appeal IFP, Poullard must demonstrate that he is impecunious and that he will present a nonfrivolous issue on appeal. Carson v. Polley, 689 F.2d 562, 586 (5th Cir. 1982). An action is frivolous under § 1915(d) "if it lacks an arguable basis in law or fact." Eason v. Thaler, 14 F.3d 8, 9 (5th Cir. 1994). This Court reviews § 1915(d) dismissals "utilizing the abuse of discretion standard." Graves v. Hampton, 1 F.3d 315, 317 (5th Cir. 1993). Dismissal of an action without granting leave to amend is not an abuse of discretion if the claims are "based upon a legally inarguable proposition." Eason, 14 F.3d at 9, 8-9.

Poullard alleged that a state court has denied him the right to attack his conviction via habeas corpus. However, he has not alleged that he attempted to file an application for postconviction relief, which is authorized by articles 924-930.8.

"[T]hese articles of the Code of Criminal Procedure on post-conviction relief merely implement the Constitutionally authorized right, of a court, to issue the writ of habeas corpus." State v. Terry, 458 So.2d 97, 100 (La. 1984). Similar state statutes providing for postconviction remedies have been approved by this court on numerous occasions. See Wilson v. Foti, 832 F.2d 891, 892-94 (5th Cir. 1987) (Louisiana); Spencer v. Wainwright, 403 F.2d 778, 780-82 (5th Cir. 1968). Accordingly, Poullard's appeal is dismissed because there is no legal basis for his lawsuit. See Eason v. Thaler, 14 F.3d at 9; Howard v. King, 707 F.2d at 219-20.

APPEAL DISMISSED.